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**File No.** O. Factories/41

Legal DEPARTMENT

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**Subject:**

Opinions under the Indian Factories Act, 1934.

P 8

**File No.**

Ltd. Scott. Slip. 21 A.

O. Factories/41

410-A

# C O N T E N T S.

**Legal Department File No. O. Factories/41.**


| S.No. | Compilation No. | Subject | Pages. |
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| | | **Opinions under the Indian Factories Act, 1934.** | |
| 1. | R.I. No. [illegible] 11-8-1941. | Sections 5, 52A & 59B | |
| | S.No. [illegible] 28-8-1941. | Effect of section 59-3 on the powers of the Provincial Government under S.A. | 1 - 4. |
| 2. | R.I. No. [illegible] 17- 1-1941. | Sections 8 and 34 — | |
| | O.No. [illegible] 22-11-1941. | Whether P.W.D. Notification No. 8355/32, dated 4th Nov. 1932 covers only those factories which do both spinning and weaving or whether it also applies to factories doing either spinning or weaving. | 5 - 8. |


L.V.V.
20/4.

7927, dated 14-8-41.

Submitted.

2. In exercise of the powers conferred by section 5 of the Factories Act, 1934, Government has declared a large number of small power concerns employing between 10 and 19 workers to be "factories" and extensive provisions of the Act, e.g. safety and adult labour provisions of Chapters III and IV have been declared to be applicable to them. It is pointed out by the Commissioner of Labour that under section 59A of the Factories Act, which has been inserted by Act XVII of 1940, these factories are now "small factories" and therefore by virtue of section 59 B if, in any of these factories, any worker who is not, or is not deemed to be, an adult is employed provisions of section 5 and Chapter IV inter alia would cease to apply. It is suggested that this would enable any of the above factories to evade successfully the essential requirements of the Act by the simple expedient of employing a child and this would result in the nullifying of the object of section 5. The Commissioner of Labour says that no concrete case of this type has at present arisen, but if one does, it will be necessary to take measures tosvoid it, even by seeking an amendment of the Act, if this is found to be inevitable. The R.L.A. has been asked to advise as to the effect of section 59B on the powers of the Provincial Government under section 5.

XXV of 1934.

Vide p.1 ante.

Vide pp.3-4 ante

3. Attention in this connection is invited to Sir Ramaswamy Mudaliar's observations at pp. 566 and 580 of L.A. Debates 1940, Vol. 1. The effect of new section 59B of the Factories Act, 1934, is that all the provisions of the Act, except clause (j) of section 2, sections 4, 5, 6, and 7, sub-sections (1) and (4) of section 14, sections 15, 21, 22 and 25, sub-sections (1) (2) and (3) of section 33 and Chapter IV automatically apply to, and in relation to, all small factories as defined in section 59A, wherein any worker who is not, or is not deemed to be, an adult is employed. It has not now been left to the discretion of the Provincial Government to apply the said provisions so far as such factories are concerned by issuing a notification under section 5 of the Act. Section 59 B however does not in any way effect the discretionary powers of the Provincial Government under section 5 of the Act, to declare by notification such a factory to be a "factory" for the purposes of the remaining provisions of the Act, such as Chapter IV, provided on any one day of the twelve months preceding the notification ten or more workers were employed therein. Also the provisions of Chapter IV made applicable to any factory under section 5, would continue to apply even if such factory subsequently becomes a "small factory" within the meaning of the Act, and a child is employed therein. In view of the legal position stated above it will not be possible for an employer to evade the provisions of the

S.O.R. underlying the Bill will be found at p. 99 of G.Of I. 1940, Part V.

Act by resorting to the expedient mentioned in para.3 of the letter of the Commissioner of Labour at P.2.

Sd.
19/8/41.

AS.

I agree.

Section 52A of the Factories Act, 1934 as amended by Amendment Act of 1940 defines the term "small factory". Section 59, 59B provides that all the provisions of this Act except clause (j) of sec.9 sections 4, 5, 6 and 7, sub-sections (1) and (4) of section 14, sections 15, 21, 22 and 25 and sub-sections (1), (2) and (3) of section 33 and chapter IV shall apply to "small factories" wherein child labour is employed. The object of the Amendment Act of 1940 is to extend the provisions of the Factories Act dealing with health, safety of children and registration to power factories employing from 10 to 19 persons if any of those persons is not qualified to work as an adult (see statement of objects and Reasons underlying the Bill No 12 of 1940 to amend the Factories Act). The following observations made by Diwan Bahadur Sir A.Ramaswamy Mudaliar while introducing the Bill in the Legislative Assembly are pertinent: "This Bill is a very modest measure and seeks only to provide for one more facility, this time to children. The provisions of the Factories Act dealing with health, safety children and registration are proposed to be statutorily applied to power factories from ten to nineteen persons if any of these persons is not qualified to work as an adult. Under the Factories Act,

P.T.O

Local Governments have got power to apply these provisions to any place or any class of places where factories employing less than 20 persons are working. Under the present Bill it is statutorily applicable to all such power Factories"(See Legislative Assembly Debates Vol.I,1940,p.556). The effect of sections 59A r.59B therefore is that Chapter V of the Act which contains special provisions for adolescents and children applies to "small factories" where children are employed and that a notification of the Provincial Government under section 5(1) for the purpose would no longer be necessary. It is true that by section 59B the application of certain provisions including section 5 is excluded; but the exclusion of these provisions is only in respect of "small factories" and the application of section 5 would not be barred if such "small factories" are also factories within its meaning. Consequently it would still be open to Government to apply by a notification under sec.5 other provisions of the Act to "small factories" provided that they are also factories within the meaning of section 5. Notifications which are already issued and which would be issued in future under section 5 applying the other provisions of the Act to factories which are also"small factories" would be intra vires. The apprehensions entertained by the Commissioner of Labour that "small factories" would by virtue of section 59B become immune from the provisions of the Chapter IV by employing children are not well founded.

This is obscure and inconsistent.
9d ; NKJ.
Applⁿ of Section 5 is not excluded; only it is compulsory and automatic (i.e. statutory application) its discretion in applⁿ is still competent.

Sd. 19/8.

A.L.R. Reply may be as in para 3 of Mr.Patel's note.

Sd/-. 21/8.

U.R.to P.& S.D. NO.7573 dt.28-8-1941.

M.V.V. 27-4.

S.I.No.20720
10-11-41.

Submitted.

The P. and S.D. Notification No.5295/34, dated 4.11.1941 exempting for a period of six months all cotton spinning and weaving factories in the Province of Bombay from the provisions of section 54 of the Factories Act,1934, was issued by this Govt. under the provisions of section 6 of the Act at the instance of the Government of India. The Commissioner of Labour, on inquiry from the Millowners' Association, Bombay, has raised the question for the P.I.A's consideration whether the said Notification covers only those factories which do both spinning and weaving or whether it also applies to factories doing either spinning or weaving.

P.35 ante.

Vide pp.1,21,37 and 43-44 ante.

pp.55-56 ante

2. The question at issue does not involve any interpretation of the provisions of the Factories Act,1934, or the rules made thereunde As the Notification in question is issued by this Government at the instance of the Central Government, the intention underlying it would be gathered from the correspondence received from that Government. In its telegram No.937 (Comp), dated 6.10.41, it is inter alia stated "They consider that best method of stimulating production is to increase both in spinning and weaving mills permissible weekly hours under section 54 Factories Act from fifty-four to six ninty ordinary overtime being payable for the additional six hours etc." The word "both" indicates that the Central Govt. intended that the increase in production should be made in spinning as well as weaving Mills and not only

P.T.O.

in the Mills doing both spinning and weaving. This intention appears to have been made clear in the Notification. The Notification in question is issued in the form indicated by the Central Govt. in their telegram No. 6077(p.27 ante). This telegram was not properly decoded. It is, however, desirable to advise the P. and S.D. to consult the Central Government on the point.

Sd.
20/11.

A. S.

M. V. V.
27/4.

Office of the R.I.A.

It appears from the telegram of the Central Government at page 1 ante underlying the P.& S.D. notification No.3296/35, dated 4th November 1941, at pate 35 ante and the plain wording of the notification itself that the said notifiention covers factories which do both spinning and weaving or either of them.

Sd/-
22/11.
Remembrancer of Legal Affairs.

U.R. to P.& S.D. No.10066, dated the 22nd November 1941.

M.V.V.
27/4.